Testimony that the prosecutrix so named the defendant would affirmatively connect him with the crime, going beyond corroboration, and objectionable as hearsay evidence.

HABEAS CORPUS—SUSPENSION OF WRIT.—During a state of insurrection, the governor declared martial law to exist in a certain district. The plaintiff was arrested by the military authorities, held without bail and denied the privilege of the writ of habeas corpus. *Held*, the governor of a State, without constitutional authority has no power to suspend the writ of hapeas corpus, since this is a legislative, and not executive, function. *Ex parte McDonald* (Mont.), 143 Pac. 947.

It is well settled that the President has no power to suspend the writ of habeas corpus in the Federal courts, that power being vested in Congress alone. *In re Kemp*, 16 Wis. 359; *Ex parte Merryman*, 17 Fed. Cas. 145. See *Ex parte Milligan*, 4 Wall. 2. But a good many authorities, under the provisions of certain State constitutions, have upheld the power of the governor to suspend the privilege of the writ of habeas corpus, in declaring a particular locality to be in a state of insurrection. *In re Boyle*, 6 Idaho 609, 45 L. R. A. 832; *In re Moyer*, 35 Col. 154, 91 Pac: 738; *State* v. *Brown* (W. Va.), 77 S. E. 243, 45 L. R. A. (N. S.) 996.

The better view would seem to be that, unless the power to suspend the writ of habeas corpus is expressly given to the governor in the State constitution, he may not exercise such power. The presumption should always be against the power of the governor to suspend the writ, since this is generally considered to be a legislative, rather than an executive function. See *Ex parte Moore*, 64 N. C. 802.

PARTNERSHIP—PARTNERSHIP BY ESTOPPEL—TORTS.—The defendant retired from a partnership of which he had been a member, but permitted the firm to continue to hold him out as a partner. The plaintiff was injured in the partnership's place of business by the negligence of a servant of the partnership acting in the course of his employment. *Held*, the defendant is liable for the tort. *Jewison* v. *Dicudonne* (Minn.), 149 N. W. 20.

It is well settled that one who knowingly permits himself to be held out as a partner, though he is not such in fact, is nevertheless liable as a partner to one contracting with the firm or extending credit to it in reliance upon such holding out. *Richards* v. *Hunt*, 65 Ga. 342. But this rule is based on the doctrine of estoppel, and accordingly it is essential that the person contracting with the firm does so in reliance upon the holding out, for the only ground of charging him as a partner is that by his conduct in holding himself out as a partner he has induced persons dealing with the partnership to believe him to be a partner, and, by reason of such belief to give credit to the partnership; he has not in fact contracted but, he is not allowed to deny that he has contracted. *Thompson* v. *First National Bank*, 111 U. S. 529; *In re Stoddard Lumber Co.*, 169 Fed. 190; 1 LINDLEY, PARTNERSHIP 47. Thus it is held that a partner who retires from the firm is not liable for obli-

gations subsequently incurred by the firm, to one who had no notice of the withdrawal, where such person never knew that the retired partner had been a member of the firm, and therefore did not act upon the belief that he was a member. *In re Stoddard Lumber Co., supra; Hornaday* v. *Cowgill* (Ind.), 101 N. E. 1030.

As to the liability in tort the authorities are very meager, but clearly the same principles would apply and there could be no such liability unless by estoppel, that is, where the tort was caused by a reliance upon the holding out. Thus one held out as partner is not liable for injuries caused by the negligent driving of a wagon belonging to the partnership. *Brudi* v. *Luhrman,* 26 Ind. App. 221, 59 N. E. 409. *Contra, Stables* v. *Eley,* 1 C. & P. 613, 11 C. L. R. 614. But this case has been strongly disapproved. See *Smith* v. *Bailey,* L. R. 2 Q. B. (1891) 403; 1 LINDLEY, PARTNERSHIP 47. Where a dormant partner secretly withdrew from the firm he was held not liable for a subsequent conversion by the partnership of the plaintiff's goods under a writ of attachment. *Shapard* v. *Hynes* (C. C. A.), 104 Fed. 449, 52 L. R. A. 675.

There is no indication that the injury for which the suit was brought in the principal case resulted from any reliance placed on the supposed membership in the firm of the retired partner, and to the extent that such person was held liable, the case would seem unsound.

TRUSTS—CORPUS OF THE TRUST FUND—CORPORATE STOCK.—A testator bequeathed corporate stock in trust, the income to certain beneficiaries for life with remainder over to others. The corporation accumulated a surplus from its earnings. On dissolution, the entire interest of the corporation was sold and the proceeds, together with an accumulated surplus, distributed among the stockholders. *Held,* the surplus also is part of the corpus of the trust estate and goes to the remaindermen. *Wilberding* v. *Miller* (Ohio), 106 N. E. 665.

The question often arises, where corporate stock is held in trust, as to the respective rights of life tenant and remainderman to funds reserved by the corporation from its earnings. There is a prevailing failure to distinguish between the distribution of such funds on dissolution of the corporation and the payment of an extraordinary dividend; and the same rule is often applied in both cases. *In re Connelly's Estate,* 198 Pa. 137, 47 Atl. 1125; *Tuttle* v. *First National Bank of Patterson,* 44 Misc. Rep. 318, 89 N. Y. Supp. 820; *Cobb* v. *Fant,* 36 S. C. 1, 14 S. E. 959; *Lord* v. *Brooks,* 52 N. H. 72.

By the Massachusetts rule all cash dividends are regarded as income, and stock dividends as part of the corpus of the trust esate; the former going to the life tenant, the latter to the remainderman. *Minot* v. *Payne,* 99 Mass. 101. See 1 VA. L. REV. 138. Opposed to this is the Pennsylvania rule regarding all dividends earned after the creation of the trust as income, and those earned before as part of the corpus of the trust estate. *Earp's Appeal,* 28 Pa. St. 368. See 1 VA. L. REV. 138. The latter rule is less technical and more widely accepted. See COOK, CORP., 7 ed., § 554. Some courts, however, regard a fund distributed upon dissolution as capital and a part of the corpus of the trust estate, with-